IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.360 of 2007

Reserved on 26-9-2007.

Date of decision: 1.10.2007

Suman Kumar & others. Petitioner

Versus

State of H.P. & others. Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

The Hon'ble Mr. Justice *V.K. Ahuja, J.*

Whether approved for reporting[1]*?*

For the petitioners: **Mr.Sanjeev Bhushan, Advocate.**

For the respondents: **Mr. M.S. Chandel, Advocate General with Mr. R.M. Bisht, Deputy Advocate General, for respondent No. 1 to 3.**

Mr. Virender Thakur, Advocate for respondent No. 4 and 5.

Per V.K.Ahuja.

This Judgment shall dispose of the Writ Petition filed by the petitioner under Articles 226/227 of the Constitution of India.

Briefly stated, the facts of the case are that the petitioners are members of the respondent- Cooperative Society. It was alleged that the respondent No.3 in violation of the provisions of the Cooperative Societies Act, 1971, has changed the bye laws of the Society in an illegal and arbitrary manner. It was alleged that

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[1] Whether the reporters of Local Papers may be allowed to see the Judgment?

one Society in the name of “Behl Kashlog Parivahan Sehkari Sabha” was existing which was thereafter named as “Golden Land Looser Parivahan Sehkari Sabha”. The said Society was running in losses and was ordered to be under liquidation by the respondents. It was alleged that on 12.9.2004 in a general meeting of the said Society which was shown to have been attended by 21 persons, vide Resolution No.3, the Managing Committee was elected and vide Resolution No.4, a resolution was passed reviving the society and President, Cashier and Secretary of the Society were authorized to have correspondence with the Assistant Registrar Co-operative Societies. The Society was thereafter revived by respondent No.3 and in a Meeting of the Managing Committee held on 1.11.2004 vide resolution No.2, a resolution was passed thanking respondent No.3 for reviving and the name of the society was changed and bye laws of the Society were also amended.

It was further alleged that as per clause 4(iv) Landless Looser and Houseless means those persons who are hereditary resident of area and whose land has been acquired for the purpose of mining, road etc. not less than one bigha. It was alleged that the President of the Society namely, respondent No.5 enrolled many persons who were not at all eligible to become members of the Society as per the bye laws and also indulged himself in various activities which were prejudicial to the Society. It was alleged that respondent No.5 got conducted fake General House on 11.6.2005 which was only attended by 15-20 members but it was shown that 32 out of 189 members had participated and the condition of one bigha was deleted from the bye laws. It was also alleged that the

signatures of some persons were also forged. The main challenge made by the petitioner is that these bye laws would have been changed by deleting condition of one bigha only by the original members of the Society and not after new members had been enrolled and therefore, the resolution passed in this regard cannot be said to be a valid one. Reply to the Writ Petition was filed by the respondents.

We have heard the learned counsel for the parties and have gone through the record and Resolution Book also, which was produced during the course of arguments.

It is clear from a perusal of the pleadings of the parties that the bye laws in regard to the membership being confined to persons whose land was acquired having not less than one bigha was changed by a subsequent amendment and passing of a resolution by addition of the new members and it is therefore, clear that this amendment in the bye laws by deletion of condition of one bigha could have been made only by the original members present at the time of passing of the resolution. It is clear that there is a dispute in regard to the presence of 24 members out of 34 or that the signatures of these persons were forged and the Resolution passed on 11.6.2005 in this regard has been mainly challenged.

We allow the writ petition in regard to this relief only in favour of the petitioner by holding that a fresh meeting of the Society and it s members shall be called under the supervision of the Registrar, Co-operative Societies or his nominee and all the 34 members, who were the original members on that date i.e. 11.6.2005 shall be issued notice to participate in the meeting and

then the resolution of amendment of the bye laws shall be moved and accordingly a decision shall be taken as to whether the bye laws require amendment by way of deletion of clause of one Bigha or not. The meeting shall be held at the earliest under the supervision of the Registrar, Co-operative Societies or his nominee as mentioned above after notices are issued to all the 34 original members as on 11.6.2005.

The writ petition is partly allowed to the extent that fresh resolution shall be passed as may be allowed by the members in accordance with the rules. There will be no order to costs.

(Deepak Gupta),
Judge

October 1, 2007 **(V.K. Ahuja),J.**
(SDS)